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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 United States of America,

10 Plaintiff,

11 v.

12 Rafael Adrian Arvayo-Lopez,

13 Defendant.
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No. CR-18-00192-001-TUC-RCC (JR)

ORDER

15 Before the Court is Defendant Rafael Arvayo-Lopez's Motion for Adjustment of
16 Sentence pursuant to Amendment 821. (Doc. 41.) The Federal Public Defender filed a
17 notice indicating it would not supplement Defendant's pro se filing. (Doc. 42.) For the
18 reasons stated herein, the Court denies the motion.

19 **I. Amendment 821**

20 In November 2023, Amendment 821 to the United States Sentencing Guidelines
21 ("U.S.S.G.") went into effect retroactively. U.S.S.G. § 1B1.10. Part A of Amendment 821
22 reduced the number of status points applied to a defendant's criminal history. *Id.* "Status
23 points" are points added when (1) a defendant received seven or more criminal history
24 points, and (2) the current offense occurred while serving a sentence for a different
25 offense. *Id.* at § 4A1.1(e); U.S. Sent'g Guidelines Manual suppl. to app. C, amend. 821
26 (U.S. Sent'g Comm'n 2023). A defendant who has six or fewer criminal history points
27 under U.S.S.G. §§ 4A1.1(a)–(d) now receives no status points. U.S.S.G. § 4A1.1(e). A
28 defendant who has seven or more criminal history points will now only receive one status

1 point instead of two. *Id.*

2 In addition, under Part B of Amendment 821, an offender who received no
3 criminal history points ("zero-point offender") can receive a two-level decrease in offense
4 level. *Id.* at § 4C1.1(a). However, Part B does not permit a two-level decrease when:

- 5 1. Defendant used "violence or credible threats of violence in connection with the
6 offense;"
- 7 2. The offense "result[ed] in death or serious bodily injury;"
- 8 3. Defendant's instant offense was a sex offense;
- 9 4. The offense caused substantial financial hardship;
- 10 5. Defendant was in possession of a dangerous weapon during the offense;
- 11 6. Defendant was "engaged in a continuing criminal enterprise";
- 12 7. The offense involved individual rights under § 2H1.1;
- 13 8. Defendant received an adjustment under either § 3A1.4 (Terrorism); § 3A1.1 §
14 3A1.6, or § 3B1.1.

15 *Id.*

16 **II. Discussion**

17 Defendant pleaded guilty to one count of Conspiracy to Possess with Intent to
18 Distribute Marijuana. (Doc. 26.) The plea agreement included a stipulated 84-month term
19 of incarceration. (*Id.*)

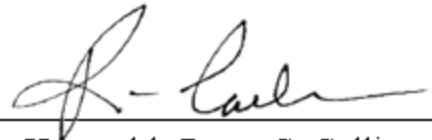
20 The presentence report calculated Defendant's total offense level as 30, determined
21 Defendant had 6 criminal history points for two prior marijuana convictions, and added 2
22 status points because Defendant committed the instant offense while under a criminal
23 justice sentence. (Doc. 34 at 9–11.) An offense level of 30 with 8 criminal history points
24 placed Defendant a criminal history category IV. (*Id.* at 10.) This resulted in a guidelines
25 range of 135–168 months' incarceration. (*Id.* at 17.) The Court adopted the presentence
26 report (Doc. 38) and sentenced Defendant to the stipulated 84 months' incarceration
27 (Doc. 39).

28 Defendant believes he should be afforded a two-level reduction in offense level
because he had no criminal history points. (Doc. 41.) This assertion is incorrect.
Defendant received 6 criminal history points for prior convictions and is not entitled to a
reduction under Section B of Amendment 821.

1 Furthermore, Defendant is not entitled to relief under Section A of Amendment
2 821. Under the United States Sentencing Guidelines, a defendant's sentence cannot be
3 reduced if—when applied—the amended sentence "does not have the effect of lowering
4 the defendant's applicable guideline range." U.S.S.G. § 1B1.10(a)(2)(B). Even if the
5 Court subtracted the two status points pursuant to Amendment 821 Section A, an offense
6 level 30 with six criminal history points (a criminal history category III) would result in
7 sentencing range of 121–151 months' incarceration. Defendant was sentenced well below
8 the amended range.

9 Accordingly, IT IS ORDERED Defendant Rafael Arvayo-Lopez's Motion for
10 Adjustment of Sentence pursuant to Amendment 821 is DENIED. (Doc. 41.)

11 Dated this 9th day of April, 2024.

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16 Honorable Raner C. Collins
17 Senior United States District Judge
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